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EPISTAR CORP. and UNITED EPITAXY CO., LTD.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LUMILEDS LIGHTING U.S., LLC,

Plaintiff,

v.

EPISTAR CORP., and UNITED EPITAXY
CO., LTD.,

Defendants.

Case No. C-05-04521 RMW

**DEFENDANTS EPISTAR CORP. AND
UNITED EPITAXY CO., LTD.'S
AMENDED NOTICE OF MOTION AND
MOTION FOR STAY PURSUANT TO 28
U.S.C. § 1659; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: February 17, 2006

Time: 9:00 a.m.

Courtroom: 6

Judge: Hon. Ronald M. Whyte

1 TO LUMILEDS LIGHTING U.S., LLC AND ITS COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT defendants Epistar Corporation's ("Epistar") and United
3 Epitaxy Co., Ltd's ("UEC") (collectively "Defendants") Motion for Stay, formerly noticed for
4 February 3, 2006, will now be heard at 9:00 a.m. on February 17, 2006, at the above referenced
5 courtroom located at 280 South First Street, San Jose, California. At that time, Defendants will and
6 hereby do move the Court, pursuant to 28 U.S.C. § 1659, for an order staying all proceedings in this
7 case until final resolution of the related investigation pending before the United States International
8 Trade Commissions, entitled *In the Matter of Certain High-Brightness Light Emitting Diodes and*
9 *Products Containing same*, Inv. No. 337-TA-556.

10 As grounds for this motion, as set forth more fully in the Memorandum of Points and
11 Authorities below, Defendants state:

12 1. Plaintiff Lumileds Lighting U.S., LLC ("Lumileds") filed the above entitled action on
13 November 4, 2005;

14 2. Lumileds also filed a complaint with the United States International Trade Commission
15 (the "ITC") on November 4, 2005, alleging that the Defendants herein are in violation of section 337
16 of the Tariff Act of 1930, 19 U.S.C. § 1337, on the same grounds as were alleged in the Complaint
17 herein;

18 3. On December 2, 2005, the Commission issued a Notice of Investigation (attached
19 hereto as "Exhibit B") formally instituting Investigation No. 337-TA-556, and naming the Defendants
20 herein as Respondents thereto; and

21 4. Defendants are entitled to stay this District Court case pending resolution of the ITC
22 investigation as a matter of right under 28 U.S.C. § 1659.

23 Defendants therefore request that the action in this Court be stayed for all purposes pursuant to
24 28 U.S.C. § 1659 until the determination of the Commission in Investigation No. 337-TA-556 becomes
25 final. Counsel for Defendants has discussed this matter with counsel for Plaintiff and is informed that
26 plaintiff does not oppose this motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

Upon the request of any party to a civil action that is also a respondent in an ITC investigation, the Court “shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission.” 28 U.S.C. § 1659(a). The requested stay is mandatory and may be denied only if the request is not made at the later of 30 days after the institution of the Commission investigation or 30 days after the civil complaint is filed. *Id.*

All of Lumileds’ claims in this civil action are involved in the ITC investigation. In its complaint, Lumileds alleges infringement of U.S. Patent Nos. 5,008,718 (“the ’718 patent”), 5,376,580 (“the ’580 patent”), and 5,502,316 (“the ’316 patent”). More specifically, Lumileds alleges that Epistar infringes the ’580 and the ’316 patents, and UEC infringes the ’718, the ’580, and the ’316 patents. Feng Decl., Ex. A. The same claims are also at issue in the ITC investigation. *Id.* Ex. B. Moreover, this motion is timely raised. The ITC published its Notice of Investigation naming Defendants as Respondents in the ITC investigation on December 2, 2005. This motion is filed December 30, within the 30 days allowed by statute. 28 U.S.C. § 1659(a)(1).

For these reasons, Defendants respectfully request that the Stay be issued.

Dated: January 5, 2006

AKIN GUMP STRAUSS HAUER & FELD LLP

By _____/s_____
Sean P. DeBruine

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EPISTAR CORP. and UNITED EPITAXY CO.,
LTD.